

1 Draft Planning Proposal - Amendments to Penrith Local Environmental Plan 2010 and draft Penrith Local Environmental Plan (Environmental Heritage Conservation) 2011

Compiled by: Elizabeth Hanlon, Senior Environmental Planner

Authorised by: Paul Grimson, Sustainability & Planning Manager

Objective	<i>We plan responsibly for now and the future</i>
Community Outcome	<i>A Council that plans responsibly for a sustainable future (3)</i>
Strategic Response	<i>Build our City's future on the principles of sustainability (3.1)</i>

Procedural note: Section 375A of the Local Government Act 1993 requires that a division be called in relation to this matter.

Executive Summary

- *Penrith Local Environmental Plan 2010 (LEP 2010)* was published on 22 September 2010 and draft *Penrith Local Environmental Plan (Environmental Heritage Conservation) 2011* (the Heritage LEP) is expected to be finalised by the Department of Planning (the Department) shortly.
- In order to correct a number of minor anomalies that have emerged, a draft Planning Proposal has been prepared to enable minor amendments to be made to LEP 2010 and the Heritage LEP. The main purpose of the Planning Proposal is to ensure that Council's intent for LEP 2010 is achieved, particularly in relation to the planning controls that apply to land in Orchard Hills and to subdivisions proposed under community title schemes.
- The draft Planning Proposal also includes amendments to address various minor discrepancies to ensure the written instrument and maps for LEP 2010 and the Heritage LEP are accurate.
- This report seeks Council's endorsement to forward the draft Planning Proposal to the Department, to seek a 'Gateway Determination' to commence the local environmental plan (LEP) making process and to commence a consultation program with public authorities and the community as required by the gateway determination.
- A copy of the draft Planning Proposal is enclosed separately for the information of Councillors.

Background

Penrith Local Environmental Plan 2010 (LEP 2010) was published (gazetted) on 22 September 2010 and came into effect on that date. LEP 2010 generally covers the City's rural and industrial areas and St Marys Town Centre. It also includes a significant number of heritage items. LEP 2010 is the first stage of Council's City-wide local environmental plan (the City-wide LEP). The draft Planning Proposal for Stage 2 of the City-wide LEP was forwarded to the Department in December 2010 seeking a 'Gateway Determination' and authorisation that the LEP making process may proceed.

The Heritage LEP was submitted to the Department in December 2009 with a request that the Minister make the plan. It is expected to be finalised shortly.

Draft Planning Proposal

This draft Planning Proposal has been prepared to enable minor amendments to be made to LEP 2010 and the Heritage LEP. The purpose of the Planning Proposal is principally to ensure that Council's intent for LEP 2010 is achieved in relation to the planning controls that apply to land in Orchard Hills and to subdivisions proposed under community title schemes. In preparing the Planning Proposal, the opportunity has also been taken to address various minor discrepancies to ensure the written instrument and maps for LEP 2010 and the Heritage LEP are accurate.

The draft Planning Proposal has been prepared in accordance with the Department of Planning Guidelines: *'A Guide to Preparing Local Environmental Plans'* and *'A Guide to Preparing Planning Proposals'*.

The proposed amendments are detailed below.

1. Orchard Hills Amendment

Following the publication of LEP 2010, it was Council's intention that all land within Sydney Regional Environmental Plan No.25 – Orchard Hills (SREP 25), with the exception of one site, Landcom land known as 'The Knoll', being part of Lot 21, DP 1151724, Nos.17-53 Caddens Road, Kingswood, would be subject to LEP 2010. The Landcom site was deferred to Stage 2 of the City-wide LEP in response to a submission from Landcom, which indicated its intention to seek a rezoning over the land. Landcom, however, has since advised that it is not proceeding with the rezoning.

Given SREP 25 was to only apply to this one site, it was not repealed. Council's Legal Officer has advised that the consequence of not repealing SREP 25 is that it continues to apply to all land in Orchard Hills, including land zoned under LEP 2010, and prevails in the event of an inconsistency between SREP 25 and LEP 2010.

The draft Planning Proposal includes a new provision be inserted in LEP 2010 to clearly indicate that SREP 25 will only apply to 'The Knoll'.

2. Subdivision Amendment

Clause 4.1 of LEP 2010 sets minimum subdivision lot sizes, by referring to a Lot Size Map, with the exception of the subdivision of individual lots in a strata plan or community title scheme, which may be subdivided into lots less than the minimum size. This was not the intent of the subdivision provisions of LEP 2010, particularly in rural and environmental zones.

The draft Planning Proposal includes a new provision to clearly indicate that land subdivided under a community title scheme must not result in lots that are less than the minimum size shown on the Lot Size Map for that land. This will ensure that a consistent approach is applied to subdivisions. It will also ensure that subdivisions under community title schemes do not undermine the objectives behind minimum lot sizes, including retaining the character and density of development within an area and minimising the fragmentation of rural land.

3. Other Minor Amendments to Penrith LEP 2010

The draft Planning Proposal includes a number of minor amendments to ensure the written instrument and maps for LEP 2010 are accurate and consistent. These amendments essentially relate to correcting typographical errors, minor mapping discrepancies and descriptions of heritage items, and rationalising the use of land use terms (most of which occurred through the translation of Council's draft LEP to the final LEP by Parliamentary Counsel).

4. Amendment to Draft Penrith LEP (Environmental Heritage Conservation) 2011

The draft Planning Proposal includes an amendment to transfer the listing of an existing heritage item, referred to as 'Regentville Workers' Terrace' on land known as 1 Bundarra Road, Regentville, from LEP 2010 to the Heritage LEP. The amendment is necessary as the heritage item is on land covered by the Heritage LEP and not LEP 2010.

Proposed Community Consultation

In accordance with the Department's guidelines, the draft Planning Proposal is classed as a 'low impact planning proposal', requiring an exhibition period of 14 days. Any consultation with public authorities will be undertaken concurrently, if the Department requires this as part of the gateway determination.

Next Steps

If Council endorses the draft Planning Proposal, it will be forwarded to the Minister for Planning, seeking a 'Gateway Determination' and authorisation that the plan making process may proceed. Approval will also be sought from the Director-General of the Department for the draft Planning Proposal to be publicly exhibited. Following exhibition, submissions will then be reviewed and a report presented to Council for its consideration.

Amendments to the Standard LEP Instrument

On 23 February 2011, the State Government published the *Standard Instrument (Local Environmental Plans) Amendment Order 2011* (the Order). The Order makes a number of changes to the Standard Instrument for Principal Local Environmental Plans Template, including refining existing standard provisions, inserting new provisions, zone objectives and land use terms and making improvements to the dictionary.

Although LEP 2010 is based on the Standard Instrument, the Order contains transitional provisions to ensure that it does not affect LEP 2010 for 4 months (from the date of commencement of the Order). Preliminary advice from the Department suggests that Council will be required to prepare another Planning Proposal to amend LEP 2010 to implement the changes made by the Order. The Department also advised that as any Planning Proposal would be a direct consequence of the Order, it is highly likely that there will be some protection from the community consultation exercise normally required. This should result in the timely delivery of the required amendments to Penrith LEP 2010.

The Department has recommended that the Planning Proposal required to implement the Order should be kept separate from the draft Planning Proposal for amendments to LEP 2010 and the Heritage LEP, given the potentially different consultation requirements.

The Planning Proposal to implement the Order will be reported to a future Council meeting.

Conclusion

Although minor in nature, the proposed amendments to LEP 2010 and the Heritage LEP are essential to ensure Council's intent for LEP 2010 is achieved. This is particularly so in relation to the planning controls that apply to land in Orchard Hills and to subdivisions proposed under community title schemes. The Department has agreed that this separate draft Planning Proposal is the most appropriate and timely way of achieving these amendments.

RECOMMENDATION

That:

1. The information contained in the report on Draft Planning Proposal - Amendments to Penrith Local Environmental Plan 2010 and draft Penrith Local Environmental Plan (Environmental Heritage Conservation) 2011 be received.
2. In accordance with the Environmental Planning and Assessment Act, 1979 and Regulation, 2000, Council endorse the Draft Planning Proposal – Amendments to Penrith LEP 2010 and draft Penrith LEP (Environmental Heritage Conservation) 2011 and forward it to the Department of Planning seeking the issue of a Gateway Determination to commence the local environmental plan making process and the exhibition of the Planning Proposal.
3. In accordance with the Environmental Planning and Assessment Act, 1979 and Regulation, 2000, Council commence the consultation program with public authorities and the community as required by the Gateway Determination.
4. A further report be presented to Council following the public exhibition of the draft Planning Proposal advising of the outcomes of the consultation program and any recommendations relating to the adoption of the final Planning Proposal.

ATTACHMENTS/APPENDICES

There are no attachments for this report